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SEC

SERVICE DATE - DECEMBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42054

PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: December 11, 2001

This case involves a challenge by PPL Montana, LLC (PPL), to the reasonableness of the rates assessed by The Burlington Northern and Santa Fe Railway Company (BNSF) for the transportation of unit trains of coal from origins in Wyoming and Montana to PPL's electric generating facility at Billings, MT. The parties filed their opening evidence and argument on December 14, 2000, their reply presentations on March 13, 2001, and their rebuttal presentations on May 7, 2001.

On May 18, 2001, BNSF filed a request for the simultaneous filing of closing briefs. PPL reportedly declined to join in the request, but filed no reply in opposition. BNSF contends that closing briefs will assist the Board in addressing the complex and extensive record developed in this proceeding by outlining the areas that are no longer in dispute and by summarizing the parties' positions on disputed issues and directing the Board's attention to relevant portions of the record supporting those positions. BNSF notes that final briefs have been accepted in other rate complaint proceedings.¹

Board action on the request for briefs was forestalled when BNSF filed, jointly with Union Pacific Railroad Company, a motion requesting that the Board consolidate this proceeding and three other pending stand-alone cost (SAC) rate complaint proceedings² for the limited

¹ See, e.g., Wisconsin Power and Light Company v. Union Pacific Railroad Company, STB Docket No. 42051 (STB served Nov. 15, 2000); FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022 (STB served July 2, 1999); CF Industries, Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served July 6, 1998); Potomac Electric Power Co. v. CSX Transportation, Inc., STB Docket No. 41989 (STB served Nov. 24, 1997); Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, No. 41185 (STB served Mar. 15, 1996); and West Texas Utilities Company v. Burlington Northern Railroad Company, No. 41191 (STB served Sept. 8, 1995).

² Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway
(continued...)

purpose of addressing certain recurring issues. In a decision served November 27, 2001, the motion to consolidate the captioned cases for consideration of selected issues was denied. The request for briefs is now ripe for resolution.

In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record. Specifically, a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute. Accordingly, by this decision, BNSF's motion to permit the filing of briefs will be granted. The parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions. The briefs shall be filed no later than 30 days after the service date of this decision and shall not exceed 25 pages. Each party shall file 10 copies of its brief as well as a computer diskette containing and electronic version of the submission in WordPerfect 9.0 format.

It is ordered:

1. Briefs not to exceed 25 pages in length are due by January 11, 2002.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

²(...continued)
Company, STB Docket No. 42056; Public Service Company of Colorado d/b/a Excel Energy v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42057; and Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, STB Docket No. 42058.